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OLC 78-1039/1

17 March 1978

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MEMORANDUM FOR: John F. Blake
Deputy Director for Administration

THROUGH: [REDACTED]
Associate Director-Management/NFAC
[REDACTED]
Deputy Director of Personnel

FROM: [REDACTED]
Assistant Legislative Counsel

SUBJECT: Authority for Training of Certain Employees

REFERENCE: Memorandum from Acting Director of Personnel,
Same Subject, dated 7 March 1978

1. The suggestion by the Office of Personnel that we should seek to obtain statutory authority to provide training or education for certain employees whose employment is terminated for certain purposes has merit. As a matter of fact, this office has been considering just such a proposal; a paper providing possible statutory language is attached.

2. The intelligence charter legislation--S. 2525/H.R. 11245--certainly would be an appropriate vehicle for such a proposal. We are just now finalizing an issues paper on Title IV (the Agency charter), and will consider the training proposal in that context. Yet another possibility would be to consider including this sort of provision in an authorization bill, since we will now be subject to the authorization procedures. We will stay in touch with all concerned Agency components on this matter.

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Attachment

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1 - OLC Subject

Approved For Release 2004/12/22 : CIA-RDP81M00980R001400020034-8

OLC: [REDACTED] sm (17 Mar 78)

LEGISLATION TO PROVIDE TRAINING FOR
CERTAIN PERSONNEL SEPARATED FROM THE
CENTRAL INTELLIGENCE AGENCY BY THE
DIRECTOR OF CENTRAL INTELLIGENCE

Certain employees of the Central Intelligence Agency, because of the unique mission and requirements of the Agency, are at a serious disadvantage in seeking private employment once their careers with the Agency have ended. In many cases, these employees possess job skills which are not readily marketable outside the Agency. Other employees are in a difficult position because security considerations prohibit their presenting an accurate picture of their job experiences and capabilities. The legislation proposed below would make these employees of the Central Intelligence Agency eligible, under certain conditions, for up to the full-time equivalent of two years of training in order to make them competitive with job seekers outside the Agency. Among the conditions for eligibility are that the person's employment is terminated by the Agency for reasons, such as a reduction in force, which do not reflect unfavorably on performance and that the employee not be immediately eligible for retirement.

The Central Intelligence Agency, like the Civil Service and the military, has the authority to make separation payments to some employees. The purpose of those payments is to help the former employee relocate following termination, generally involuntary, of his career in Government or the military and to ease the transition into a new job. The purpose of the training permitted by the language proposed below is different -- to assist employees in developing a skill which will enable them to make the transition to other employment.

The proposed language is as follows:

"(a) An employee with five years of service with the Central Intelligence Agency whose employment is to be terminated, other than for cause on charges of misconduct, delinquency or inefficiency, may receive not more than the full-time equivalent of two years of training if

(1) the Director of Central Intelligence determines that the employee is at a disadvantage in finding new employment because the nature, circumstance or security requirements of the employee's service are clearly distinguishable from normal Government employment; and

(2) the employee does not qualify for immediate retirement benefits.

(b) During the period of training under this section, the employee shall be --

(1) retained at his last assigned grade and rate of pay;

(2) entitled to each increase in rate of pay provided by law or regulation; and

(3) excluded from staffing limitations otherwise applicable.

(c) The Director of Central Intelligence shall prescribe such regulations as necessary to carry out this section."

5 U.S.C. section 3381 provides a precedent for this type of payment in the case of air traffic controllers. Like the Central Intelligence Agency employees who would be covered by this proposed legislation, air traffic controllers have a job skill which is not readily marketable outside the Federal Aviation Administration. They are thus provided with training once they can no longer perform the duties of an air traffic controller.

EXECUTIVE ORDER NO. 11583

Apr. 1, 1971, 36 F.R. 6343

DELEGATION OF FUNCTIONS TO CIVIL SERVICE COMMISSION

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 301 of Title 3, The President), and as President of the United States, it is ordered as follows:

Section 1. The United States Civil Service Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 2378 of title 5 of the United States Code (this section) to prescribe regulations for the administration of subchapter VI, "Assignments to and from States" of chapter 33 of that title (this chapter).

(b) The authority of the President under section 235(a) (4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 235(a) (4)) (section 235(a) (4) of Title 50, Appendix, War and National Defense), and as affected by Reorganization Plan No. 1 of 1953 (72 Stat. 1739) [set out in the Appendix to this title], relating to personnel standards on the merit basis.

Sec. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 12352 of July 21, 1971, as amended [set out as a note under section 2311 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

RICHARD NIXON

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary of Transportation has determined—

- (1) he is medically disqualified for duties as a controller;
- (2) he is unable to maintain technical proficiency as a controller;

or

(3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

- (1) retained at his last assigned grade and rate of basic pay as a controller;
- (2) entitled to each increase in rate of basic pay provided under law; and
- (3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Department of Transportation;
- (2) released for transfer to another Executive agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 529 of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter 1 of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105(a), 4107(a) and (b), and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

Added Pub.L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.

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Effective Date. Section 10 of Pub.L. 92-297 provided that: "This Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8341 to 8336, 8339, 8341, 8344 of this title, and repealing provisions set out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3397 of this title] shall become effective at the beginning of the sixtieth day after the date of enactment of this Act [May 16, 1972]."

Report to Congress. Section 9 of Pub.L. 92-297 provided that: "The Secretary of Transportation shall make a report to Congress of his operations under the amendments made by this Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8339, 8339, 8341, 8344 of this title, enacting

provisions of section and repealing provisions of section 8335 shall include effectiveness needs of the program and system, and the Secretary shall make his report after the date [May 16, 1972]."

Legislative history and 1972 U.S. Code 2287.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for involuntary separation under section 8336 of this title may be separated involuntarily if the Secretary of Transportation determines that a controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic; or
- (3) the preservation of the physical or mental health of a controller.

Chapter 75 of this title does not apply to a determination under this section. Separation under this section shall be without the consent of the controller, until the last day following the day the controller receives a notification by the Secretary under this section, or, if a determination is issued by a board of review under section 8333 of this title, the last day of the determination whichever is later. A controller who is to be separated is entitled to training under section 3381 of this title. A controller who elects to receive training under this section shall become final until the last day of the month of his training.

Added Pub.L. 92-297, § 3(a), May 16, 1972.

Effective Date. Section effective on the 60th day after May 16, 1972, see section 10 of Pub.L. 92-297.

§ 3383. Determinations; review procedure

(a) An air traffic controller subject to a determination by the Secretary of Transportation under section 3381(a) shall be furnished a written notice of the determination, and a notification that the controller may request a review of the determination within which to file a request for consideration of the determination. Unless the controller files a request within the 15 days, or unless the determination is reconsidered by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within the 15 days, the determination shall be final. If the Secretary does not rescind his determination within the 15 days, the determination shall be final. If the Secretary does not rescind his determination within the 15 days, the determination shall be final.

- (1) a person designated by the controller;
- (2) a representative of the Department of Transportation designated by the Secretary; and
- (3) a representative of the Civil Service Commission designated by the Chairman, who shall serve as chair of the board.

(c) The board of review shall review evidence submitted with the determination of the Secretary.

11 U.S.C.A.—2374
1976 P.P.

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